

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SINGULARDTV GMBH,

Plaintiff,

v.

Case No. 1:21-cv-10130__

ZACHARY LEBEAU and KIMBERLY
JACKSON,

Defendant.

**DECLARATION OF MICHAEL MRÁZ IN SUPPORT OF
MOTION FOR PRELIMINARY INJUNCTION AND, IN THE INTERIM,
TEMPORARY RESTRAINING ORDER**

Pursuant to 28 U.S.C. § 1746, I, MICHAEL MRÁZ, states as follows:

1. I am a partner at Wenger Vieli AG, Zurich, Switzerland (“Wenger Vieli”). Wenger Vieli, acting through me, advises and represents SingularDTV GmbH (“SingularDTV” or the “Company”) in all legal matters in Switzerland, including corporate, notarial, dispute resolution, and criminal matters. A true and correct copy of our power of attorney is attached as Exhibit 1. Wenger Vieli has advised and represented the Company since 2019.

2. I submit this Declaration in support of SingularDTV’s Motion for Preliminary Injunction and, in the Interim, Temporary Restraining Order in the above-captioned action.

3. I understand that in or around May 2021, a hacker—allegedly using a spoofed e-mail address and allegedly aided by unauthorized access to the Microsoft Outlook account of SingularDTV’s then-general counsel, Carl Volz¹—impersonated SingularDTV’s Chairman of the

¹ Mr. Volz was terminated as General Counsel for SingularDTV in May 2021 by Zachary LeBeau, SingularDTV’s then-Chief Executive Officer (“CEO”).

Board of Directors (the “Board”), Arie Levy-Cohen, for the purpose of stealing digital assets from the Company. Allegedly duped by this scheme, on May 6, 2021, SingularDTV’s then-CEO, Mr. LeBeau, transferred various digital assets belonging to the Company to the hacker’s digital wallet addresses. At the time of the transfer, these digital assets were apparently worth approximately USD \$2 million. SingularDTV intends to investigate this sequence of events (the “Hack”) and has not ruled out the involvement of one or more Company insiders, including LeBeau.

4. On May 19, 2021, Mr. Levy-Cohen—acting as Chairman of the Board—invited the Company’s directors to participate in a Board meeting on May 27, 2021 to discuss “the compliance incident” (*i.e.*, the Hack) and “resolutions to be taken” in response, including “the exit of [Mr. LeBeau] as CEO” (the “May 19, 2021 Board Notice”). A true and correct copy of the May 19, 2021 Board Notice is attached as Exhibit 2.

5. Mr. LeBeau raised various objections to the May 19, 2021 Board Notice and ultimately refused to attend the May 27, 2021 Board meeting. Contrary to Mr. LeBeau’s unfounded objections, the May 27, 2021 Board meeting was duly convened in accordance with Swiss law and SingularDTV’s bylaws (the “Bylaws”), and a quorum of the company’s directors participated. Specifically, Section IV.C of the Bylaws requires “notice of any board meeting . . . not less than seven (7) days prior to the date of the meeting,” and Section IV.D provides that “[a] board meeting is validly constituted, if at least 50% [of] the Managing Directors are present (including by video or telephone conference).” A true and correct copy of the Bylaws is attached as Exhibit 3.

6. At the May 27, 2021 Board meeting, SingularDTV’s Board voted to: (i) terminate Mr. LeBeau as CEO with immediate effect; (ii) revoke Mr. LeBeau’s signatory powers and authority to act on SingularDTV’s behalf; (iii) direct Mr. LeBeau to return SingularDTV assets to

a multi-signature custody arrangement controlled by SingularDTV; (iv) terminate, as soon as possible, SingularDTV's relationship with SingularDTV LLC, a New York entity doing business under the trade name "Breaker LLC"; (v) form a dissolution committee "for an orderly wind-down of [SingularDTV] as soon as practicable"; and (iv) cease "any spending on content" immediately and "take[] all steps to completely exit any remaining obligations for the production of content, effective immediately." A true and correct copy of the May 27, 2021 Board minutes is attached as Exhibit 4.

7. Pursuant to the May 27, 2021 Board resolution to terminate "any relationship between the Company and Breaker LLC ... as soon as possible," on May 28, 2021, SingularDTV sent a letter (through its managing director and Chief Technology Officer, Joseph Lubin) terminating the January 2017 Service and Development Agreement between SingularDTV and Breaker LLC and instructed Kimberly Jackson² "to perform no additional work from receipt of this notice," "to incur no additional fees," and to "full[y] deliver[] [] any intellectual property or financial assets held by Breaker LLC on behalf of Singular[DTV]" (the "May 28, 2021 Termination Notice"). A true and correct copy of the May 28, 2021 Termination Notice is attached as Exhibit 5.

8. To the best of my information, knowledge, and belief, neither Ms. Jackson nor Mr. LeBeau has responded to the May 28, 2021 Termination Notice and, based on their actions since, appear to have disregarded it altogether.

9. Indeed, after Ms. Jackson failed to surrender (or even respond to) SingularDTV's request to deliver its intellectual property and financial assets, at a Board meeting on June 8, 2021 (the "June 8, 2021 Board meeting"), the Board resolved to terminate Ms. Jackson's position as

² Ms. Jackson is Mr. LeBeau's common-law wife, the sole member of Breaker LLC, and was engaged as an independent contractor to act as SingularDTV's Chief Operations Officer ("COO") in late 2018.

COO of SingularDTV. A true and correct copy of the June 8, 2021 Board meeting minutes is attached as Exhibit 6.

10. The persons authorized to represent a company must be entered in the Swiss Commercial Register. The Swiss Commercial Register is a network of state-run databases. Its primary purpose is the recording and publication of legally relevant information (such as the directors of a company and their signatory powers) about legal entities, which serves to provide legal certainty and protect third parties. If a fact is recorded in the commercial register, no one may claim that they were unaware of it.

11. The Swiss Commercial Register for the Canton of Zug (the “Zug Commercial Register”) maintains a publicly available online database of registered companies at <https://zg.chregister.ch/>. As the Zug Commercial Register shows, the May 27 termination of LeBeau’s signatory rights were recorded on August 2, 2021. Later, on October 15, 2021, he was removed as a managing director of SingularDTV, which the Commercial Register also shows. A true a correct copy (in English) of the Zug Commercial Register for SingularDTV is attached as Exhibit 7.

12. Given that Ms. Jackson was never authorized to sign contracts or other legally binding instruments on SingularDTV’s behalf, she is not listed in the Zug Commercial Register as an authorized signatory. In other words, the Zug Commercial Registry for SingularDTV clearly shows that Ms. Jackson never was an authorized signatory for the Company. Likewise, Ms. Jackson was never granted a power of attorney in the Company’s records.

13. As it concerns Mr. Levy-Cohen, the Zug Commercial Register makes clear that he is, and has always been, a Director of SingularDTV.

14. On September 24, 2021, Mr. LeBeau filed a “Request for Conciliation” (on behalf of himself as a SingularDTV shareholder) with the Justice of Peace Office in Zug, Switzerland requesting, among other things, that a court dissolve SingularDTV and that its assets be liquidated (the “Swiss Shareholder Dispute”). In the Swiss Shareholder Dispute, Mr. LeBeau repeatedly admitted his lack of authority to act for SingularDTV. For example, Mr. LeBeau asserted in the Swiss Shareholder Dispute on September 24, 2021 that:

- “Lubin and Cohen had already revoked plaintiff’s authority to sign and had it removed from the commercial register.”
- “The plaintiff cannot represent the company anymore. He has been deprived of any ability to influence the Company’s operational developments.”
- “The agenda includes the removal of the plaintiff as managing director of the company. Due to the majority situation in the company, it is to be expected that the plaintiff will be voted out of office.”
- “As a result, Lubin and Cohen can henceforth exercise operational control over the Company and its assets without accountability to Plaintiff.”
- “He [LeBeau] can hardly have any influence on the happenings of the company. Likewise, he is currently excluded from the management of the company.”

A true and correct copy of Mr. LeBeau’s September 24, 2021 filing in the Swiss Shareholder Dispute (translated into English) is attached as Exhibit 8.

15. I have also learned that Mr. LeBeau filed other lawsuits concerning SingularDTV, including two lawsuits filed in the name of the Company, including one in this District. Specifically, on June 3, 2021, Mr. LeBeau, through his personal attorney in Switzerland, Paolo Losinger, filed a criminal action on behalf of SingularDTV against Mr. Levy-Cohen before the Public Prosecutor’s Office in Zug, Switzerland (the “Swiss Criminal Action”). SingularDTV never authorized Mr. Losinger to act in the Company’s name and Mr. LeBeau’s signatory authority for the Company had already been terminated when Mr. LeBeau caused Mr. Losinger to file the Swiss Criminal Action. On November 3, 2021, I sent a letter to the Public Prosecutor’s Office in

Zug, Switzerland informing them of this. A true and correct copy of that letter (translated into English) is attached as Exhibit 9.

16. Separately, on July 13, 2021, LeBeau filed an action in this District—*SingularDTV GmbH v. John Doe*, No. 21-cv-6000 (S.D.N.Y. filed July 13, 2021) (the “SDNY Action”)—in the name of the Company. As with the Swiss Criminal Action, SingularDTV never authorized Mr. LeBeau’s attorneys to act in the Company’s name, and Mr. LeBeau’s signatory authority for the Company had already been terminated when Mr. LeBeau caused his attorney to file the SDNY Action. SingularDTV has since filed a motion to intervene in the SDNY Action through its counsel of choice, Kobre & Kim LLP.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on November 26, 2021,
in the City of Zurich, Switzerland



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